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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,090	02/20/2004	Henry W. Bonk	402200003DVC	6886
27572	7590	07/01/2010		
HARNESS, DICKEY & PIERCE, P.L.C.				
P.O. BOX 828				
BLOOMFIELD HILLS, MI 48303				
EXAMINER				
AUGHENBAUGH, WALTER				
ART UNIT		PAPER NUMBER		
1782				
MAIL DATE		DELIVERY MODE		
07/01/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/784,090	Applicant(s) BONK ET AL.
Examiner WALTER B. AUGHENBAUGH	Art Unit 1782

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782

Continuation of 11, does NOT place the application in condition for allowance because: Applicant appears to argue that Lee cannot be used in the ODP rejections because "Applicants do not claim a thermoplastic molding composition". While it is unclear why this would be a reason that Lee cannot be used, Applicant (and the primary references in the ODP rejections) does claim a thermoplastic polyurethane, so it would have been obvious to one of ordinary skill in the art at the time the invention was made to have looked to Lee for teachings as to well known methods for making thermoplastic polyurethane.

The primary references in the ODP rejections claim a thermoplastic polyurethane, so it would have been obvious to one of ordinary skill in the art at the time the invention was made to have looked to Lee for teachings as to well known methods for making thermoplastic polyurethane.

Applicant states "The Examiner's argument is that the Lee polyurethane is being used in molding, therefore it would be obvious to make Applicant's cushioning device from it." Page 3 of After-final Response. However, Applicant does not appear to have support for stating that this is "[t]he Examiner's argument". It is believed the Office Action does not state or suggest this anywhere. The ODP rejections clearly emphasize the chemistry involved in making polyurethane as it relates to Applicant's claimed subject matter (that is, the reactants from which thermoplastic polyurethane is formed), and clearly do not emphasize molding. See the ODP rejections of record. Applicant's claim 1 recites reactants from which thermoplastic polyurethane is formed. The primary references in the ODP rejections claim a thermoplastic polyurethane, so it would have been obvious to one of ordinary skill in the art at the time the invention was made to have looked to Lee for teachings as to well known methods for making thermoplastic polyurethane. In other words, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have looked to Lee for teachings as to well known reactants from which thermoplastic polyurethane is formed.

Lee meets both prongs of the analogous art test Applicant mentions, even though only one prong must be met, because (1) making polyurethane is in the field of Applicant's endeavor (see Applicant's claim 1, which recites reactants from which thermoplastic polyurethane is formed: if Applicants recite reactants used to make polyurethane in claim 1, making polyurethane is in the field of Applicant's endeavor), and (2) how thermoplastic polyurethane is made is reasonably pertinent to the problem with which the inventor was concerned (how thermoplastic polyurethane is made is relevant to making thermoplastic polyurethane, see Applicant's claim 1, which recites reactants from which thermoplastic polyurethane is formed).